

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

74 1012

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
LEON SEGAN, :
 :
Plaintiff-Appellant, :
 :
-against- :
 :
DREYFUS CORPORATION, et al., :
 :
Defendants-Appellees. :
-----x

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

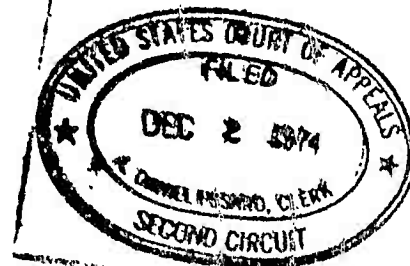
BRIEF OF DEFENDANTS-APPELLEES
LAZARD FRERES & CO., FELIX G.
ROHATYN AND ANDRE MEYER

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For the Second Circuit

Docket No. 74-1012

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Plaintiff-Appellant,

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BRIEF OF DEFENDANTS-APPELLEES
LAZARD FRERES & CO.,
FELIX G. ROHATYN,
AND ANDRE MEYER

Defendants-Appellees Lazard Freres & Co. ("Lazard") and two of its partners, Felix G. Rohatyn ("Rohatyn") and Andre Meyer ("Meyer"), join in and will not repeat the arguments set forth in the Brief of Defendants-Appellees Dreyfus Corporation, Stein, Johnson, Smerling and Greene (the "Dreyfus defendants").

The Dreyfus defendants show that the judgment of the District Court should be affirmed because the complaint does not comply with the particularity requirements of Rule 9(b), Fed. R. Civ. P. As their brief amply demonstrates, the complaint charges multiple fraudulent transactions over a three-year period. Yet it fails to identify -- with but one possible exception -- any of the transactions alleged to be fraudulent.

The sole paragraph of the complaint containing any element of specificity is paragraph 21, which refers to the so-called ITT transaction. Yet even this paragraph, which the District Court referred to as plaintiff's purported "example" or "illustration", is entirely inadequate under Rule 9(b) as to Lazard, Rohatyn and Meyer.

In the initial subsections of paragraph 21, plaintiff "sets the stage" for his charges by reiterating bits of background information which he read in the newspaper article on which he based his suit. Specifically, he alleges that in 1969, in order to obtain a favorable tax ruling, International Telephone and Telegraph Corporation ("ITT") sold 1.7 million shares of the Hartford Fire Insurance Company (the "Hartford shares") to Mediobanca, an

Italian bank, under an agreement which allegedly provided that the risk of loss remain on ITT; and that Mediobanca subsequently exchanged its Hartford shares for ITT shares (§ 21, (a) to (d)).

Plaintiff then reaches the substance of his charge of wrongdoing to the Dreyfus Fund: He claims that the Dreyfus Corporation caused the Dreyfus Fund to purchase some of the shares of ITT stock from Mediobanca in order to induce ITT to award the management of certain pension funds to Dreyfus Marine Midland Management Corp. ("Dreyfus-Marine"). According to plaintiff, the management of these funds was a business opportunity which should have been afforded to the Dreyfus Fund (§ 21, (d) to (h)).

In this entire recital, plaintiff's allegations of participation by Lazard, Rohatyn and Meyer are limited to the following: (1) Rohatyn and Meyer were "instrumental in arranging" the 1969 sale of Hartford stock from ITT to Mediobanca (§ 21(c)); (2) Lazard somehow "acted in concert" with Mediobanca when Mediobanca sold shares of ITT stock to the Dreyfus Fund (§ 21(d)); and (3) the Lazard defendants "knew or should have known of the fiduciary relationship between Dreyfus Fund" and the Dreyfus defendants, which

"prohibits self-dealing . . . at the expense of . . . Dreyfus Fund." (§ 21(h)). Finally, in prior conclusory paragraphs (§§ 19 and 20), the Lazard defendants are charged with "actual and/or constructive knowledge" of unspecified fraudulent schemes allegedly engaged in by other defendants.

Since, for good reason, the complaint nowhere suggests that the Dreyfus Fund was in any way injured by the 1969 sale of Hartford shares by ITT to Mediobanca, the first alleged "participation" by the Lazard defendants is patently irrelevant to plaintiff's claim.

The remaining alleged participations by the Lazard defendants -- that they "acted in concert" with Mediobanca in that bank's sale of shares to the Fund, and that they "knew or should have known" of a fiduciary relationship between the Fund and Dreyfus Corporation -- fail to particularize any act or omission giving rise to any liability on their part.

There is no specification whatsoever as to the nature of Lazard's alleged participation in the sale of ITT shares to the Dreyfus Fund; nor is there any suggestion of facts or circumstances giving rise to any duty of disclosure owed by Lazard to the Fund. Indeed, there is not even an

allegation that the Lazard defendants had actual knowledge of any alleged scheme by other defendants to use this transaction in furtherance of the business interests of Dreyfus-Marine, to the detriment of the Fund. Moreover, even if one incorporates into this paragraph plaintiff's prior wholesale charge that the Lazard defendants had "actual and/or constructive" (emphasis added) knowledge of unspecified fraudulent schemes of others (§§ 19 and 20), the complaint is still bare of a single fact or circumstance suggesting a basis for this claim.

In short, even plaintiff's sole "illustrative" transaction is fatally defective as to Lazard, Rohatyn and Meyer. For this reason, and for all of the reasons set forth in the brief of the Dreyfus defendants, the judgment of the District Court should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

EDWARD SUTTON, being duly sworn, deposes and says:

1. That deponent is a party to the action, is over 18 years of age and resides at 273 Cypress Avenue, Bronx, New York.

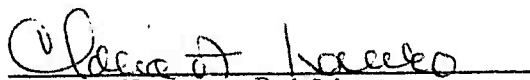
2. That on November 27, 1974 deponent served two copies of the within Brief upon:

Courdert Brothers
200 Park Avenue
New York, New York,

by delivering a true copy thereof to their office and leaving the same with the person left in charge thereof.


EDWARD SUTTON

Sworn to before me this
2 day of December, 1974.


Notary Public

CLARENCE A. L. 1180
Notary Public, State of New York
No. 30403100
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1976

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SULLIVAN & CROMWELL
ATTORNEYS FOR _____

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STRECK & S.

Barbara Streck